

their sales prices in effect immediately prior to the effective date of CPR 81. These sellers of frozen vegetables may sell at or below the ceiling prices established under CPR 81. If, however, a seller chooses to price under the provisions of this supplementary regulation for any item, he must price all items of frozen vegetables of the 1951 pack under this supplementary regulation. All provisions of CPR 81 not inconsistent with this supplementary regulation remain in full force and effect.

**SEC. 2. *Optional pricing for frozen vegetables.*** You may establish as your ceiling price for each item of frozen vegetables covered by the provisions of CPR 81, your weighted average sales price for each such item during the period November 1 to 30, 1951, inclusive. In computing this "weighted average sales price," you shall include all actual sales at firm prices of the item made during the period in the regular course of business, regardless of the date of delivery or date of pack. You shall exclude the following sales and sales contracts, even though made during the period: Sales at retail (including sales to growers and employees) and at wholesale; sales to chain store buying agencies, or to retail store buying agencies which warehouse the product; sales to government procurement agencies; sales to institutions and domestic users, state agencies and political sub-divisions thereof; sales of damaged goods and goods packed for experimental purposes. "If you made no sales of a particular item during the period November 1-30, 1951, inclusive, you shall substitute for that period the first from among the following periods in which you did make sales of such item: October 1-31, 1951, inclusive; September 1-30, 1951, inclusive; August 1-31, 1951, inclusive; April 1-30, 1951, inclusive; June 1-30, 1951, inclusive; May 1-31, 1951, inclusive; April 1-30, 1951, inclusive; March 1-31, 1951, inclusive; February 1-28, 1951, inclusive (in that order)."

**SEC. 3. *Ceiling prices for processors unable to use section 2 of this supplementary regulation.*** If you made no sales of a particular item during the period February 1-November 30, 1951, inclusive, and you desire to price all items of all frozen vegetables of the 1951 pack under this supplementary regulation, you shall establish as your ceiling price for such item not sold during such period

your ceiling price established under the provisions of the General Ceiling Price Regulation.

**SEC. 4. *Sales under Ceiling Price Regulation 81.*** You may sell items of frozen vegetables of the 1951 pack at or below your ceiling prices established under CPR 81 without reference to this supplementary regulation. However, if you establish a ceiling price for any item of frozen vegetables under this supplementary regulation, you shall establish ceiling prices for all items of all frozen vegetables under this supplementary regulation.

**SEC. 5. *Reports which must be filed.*** In every case, whether or not you choose to price under the provisions of this supplementary regulation, you shall regardless of the provisions of section 19 (b) of CPR 81, mail to the Fruit and Vegetable Branch, Office of Price Stabilization, Washington 25, D. C., not later than December 8, 1951, all reports required by section 19 (a) of CPR 81. In the event that you are not able to calculate a ceiling price for any item under CPR 81, you shall file your report for those items for which you can calculate ceiling prices, and shall state the reason why you are unable to calculate ceiling prices for all other items.

## **CPR 82—Ceiling Prices for Frozen Fruits and Berries of the 1951 Pack**

### **Sec.**

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23. Treatment of excise taxes.
24. Compliance with this regulation.
25. Petitions for amendments, protests and interpretations.
26. Definitions.
27. Different price classes.

**AUTHORITY:** Sections 1 to 27 issued under sec. 704, 64 Stat. 816, as amended; 50 U. S. C. App. Sup. 2154. Interpret or apply Title IV, 64 Stat. 803, as amended; 50 U. S. C. App. Sup. 2101-2110; E. O. 10161, Sept. 9, 1950, 15 F. R. 6105; 3 CFR 1950 Supp.

**SOURCE:** Sections 1 to 27 contained in Ceiling Price Regulation 82, 16 F. R. 10454, Oct. 12, 1951; 16 F. R. 11859, Nov. 24, 1951, except as otherwise noted.

**SECTION 1. Coverage of this regulation—**(a) *What products and sellers are covered.* This regulation establishes ceiling prices for sales by processors and base distributors of the 1951 pack of all frozen fruits. This regulation does not apply to sales of frozen citrus products or other frozen fruit concentrates and purees.

(b) *Pricing provisions to be used.* The main pricing methods for most processors and base distributors (as defined in section 26) are found in sections 2 and 3 of this regulation. These pricing methods establish two separate formulas to apply to the following situations: (1) A processor of an item selling to other processors of the item; (2) a processor of the item selling to a base distributor; (3) a processor of the item selling to a wholesaler; and (4) a base distributor selling to a wholesaler. If you are a processor, you calculate your ceiling prices under section 2. If you are a base distributor, you figure your ceiling prices under section 3. It is possible for you to be a processor as to some items and a base distributor as to others. If, however, you are a grower-processor, a grower-cooperative, or if you purchase raw material on open-end contracts, you calculate your ceiling prices under section 4. Section 5 of this regulation sets forth the method of calculating your ceiling prices for items not sold

during the base period. Sections 6 and 7 of this regulation establish methods by which processors and base distributors who cannot calculate their ceiling prices under any of the other provisions of this regulation may calculate ceiling prices.

(c) *Where this regulation applies.* This regulation applies in the 48 states of the United States and the District of Columbia.

(d) *What this regulation supersedes.* For the products and sellers covered, this regulation supersedes the General Ceiling Price Regulation.

**SEC. 2. Ceiling prices for processors.** For each item you shall calculate a separate ceiling price for sales to other processors and base distributors and a separate ceiling price for sales to wholesalers. You do this by first determining your "base price" for each class. Thereafter, for each class, you adjust your base price by an adjustment for cost increases other than raw material, by an adjustment for sugar cost changes, and then by an adjustment for raw material cost charges.

(a) *How processors determine their base price.* Your "base price" is your weighted average sales price per unit of sale, including no more than one month's storage charges, for sales made during the "base period", as defined in section 26, for each of the two classes of sales. Your "weighted average sales price" for each class is the total gross sales dollars charged f. o. b. factory for the item to that class, including no more than one month's storage charges, during the base period divided by the number of units of sale represented thereby.

(1) *What sales and sales contracts you include in your weighted average sales price.* You include in your weighted average sales price all actual sales at firm prices, including no more than one month's storage charges, of the item made during the base period in the regular course of business, regardless of the date of delivery or date of pack. You exclude the following sales and sales contracts, even though made during the base period; sales at retail (including sales to growers and employees) and at wholesale; sales to chain store buying agencies, or to retail store buying agencies which warehouse the product; sales to government procurement agencies; sales to institutions and domestic users, state

agencies and political sub-divisions thereof; sales of damaged goods, and goods packed for experimental purposes.

(2) *Base price for factory group.* In determining your base price, you may determine one base price for each class of sale for any group of factories, all of which are located in the same pricing area. You shall use only one "base period" for each factory group. You shall

compute only one raw material adjustment under paragraph (c) of this section for each such factory group.

(b) *How to adjust for permitted increases other than raw material and sugar.* After obtaining your base prices for each item, you shall multiply it by the appropriate figure set forth in Table I for the area in which your factory is located.

TABLE I—PERMITTED INCREASES OTHER THAN RAW MATERIAL AND SUGAR

Product	Area		Adjustment factors	
	No.	States included	Retail and institutional sizes	Other sizes
Frozen R. S. P. cherries.....	I	All States.....	1.03	1.02
Frozen apples and sauce.....	I	California, Oregon, Washington....	1.05	1.03
	II	All other States.....	1.09	1.06
Frozen strawberries.....	I	California, Oregon, Washington....	1.03	1.02
	II	All other States.....	1.04	1.025
Other frozen fruits and berries, including all mixtures of fruits or berries.	I	All States.....	1.04	1.025

NOTE: Retail and institutional sizes mean all sizes of containers up to, but not larger than, 20 pound containers.

(c) *How to figure the raw material adjustment.* Next, you shall determine your raw material adjustment, other than for sugar or syrup by the following procedure:

(1) Determine the difference between your 1948 and, up to the date of this computation, your 1951 weighted average raw material cost, as defined in section 26 of this regulation, per ton (or other unit of purchase).

(2) If your 1951 cost is greater than your 1948 cost and if the permitted adjustment listed in Table II is a plus figure, you shall use either your actual increase or the appropriate increase listed in Table II, whichever increase is less. If your 1951 cost is greater than your 1948 cost, and if the permitted adjustment listed in Table II is a minus figure, you shall use the appropriate increase listed in Table II. If your 1948 cost is greater than your 1951 cost and if the permitted adjustment listed in Table II is a plus figure, you shall use your actual decrease. If your 1948 cost is greater than your 1951 cost and if the permitted adjustment listed in Table II is a minus figure, you shall use either your actual decrease or the appropriate decrease listed in Table II, whichever is the larger.

(3) You then divide your average raw material cost adjustment per ton (or other unit of purchase) by the simple average of your yields per ton (or other unit of purchase) of the raw material for the years 1948, 1949 and 1950 (or

such of them in which you packed the product), reduced to your usual units of sale, and adjust for grade yield distribution according to your customary practice during such period.

The result of the computations in this paragraph is your upward or downward adjustment for raw material costs per unit of sale of the item.

If the final result of your computations for raw material cost adjustment provided in this paragraph is an increase, you shall add such increase per unit of sale to your adjusted base price as determined in paragraph (b) of this section. If the final result of your computations provided in this paragraph is a decrease, you shall subtract such decrease per unit of sale from your adjusted base price as determined in accordance with paragraph (b) of this section.

(d) *Your sugar or syrup cost adjustment.* (1) You shall compute your sugar or syrup cost adjustment by first determining the difference between the weighted average cost per unit of purchase of your sweetening ingredient in 1948 and in 1951 up to the date of this calculation of your ceiling price. You then convert this difference to a cost per pound, dry basis. Next, you determine the weight of the put-in sweetening ingredient per unit of sale and multiply that weight by the difference in cost of the sweetener per pound. The result is your sugar or syrup cost adjustment.

TABLE II—RAW MATERIAL COST ADJUSTMENTS

Raw material	Area	Unit	Permitted adjustment in dollars per unit
Apricots.....	California.....	Ton.....	+49.00
	Utah.....	do.....	+78.30
	Washington, Oregon.....	do.....	+64.10
	All other States.....	do.....	+45.40
Cherries, Sour.....	Ohio.....	do.....	-1.00
	New York, Pennsylvania, Oregon and Washington.....	do.....	+25.00
	Michigan, Utah.....	do.....	+55.00
	All other States.....	do.....	+77.00
Cherries, Sweet.....	California.....	do.....	-1.00
	Idaho.....	do.....	+15.00
	New York, Pennsylvania, Ohio.....	do.....	+54.00
	Oregon, Washington.....	do.....	+99.00
	Michigan.....	do.....	+41.00
	All other States.....	do.....	+20.00
Cranberries.....	All States.....	Barrel.....	+10.50
Figs.....	California.....	Ton.....	+51.00
	Texas.....	do.....	+71.00
Peaches, Clingstone.....	All States.....	do.....	+11.10
Peaches, Freestone.....	Oregon, Washington.....	do.....	+23.65
	California.....	do.....	+11.90
	South Carolina.....	do.....	-5.30
	Georgia.....	do.....	+11.95
	Michigan.....	do.....	+42.50
	All other States.....	do.....	+16.31
Pears.....	California.....	do.....	-26.50
	Oregon, Washington.....	do.....	-7.30
	All other States.....	do.....	+2.00
Plums.....	California.....	do.....	-6.80
	All other States.....	do.....	+23.20
Prunes, Fresh.....	Washington, Oregon.....	do.....	+28.00
	All other States.....	do.....	+24.70
Blackberries.....	All States (except Washington and Oregon).....	Pound.....	+ .062
	Washington and Oregon.....	do.....	+ .10
Boysenberries.....	All States.....	do.....	+ .025
Gooseberries.....	do.....	do.....	+ .044
Loganberries.....	do.....	do.....	+ .023
Raspberries, Black.....	do.....	do.....	+ .005
Raspberries, Red.....	do.....	do.....	+ .07
Strawberries.....	Louisiana.....	do.....	+ .006
	California.....	do.....	+ .020
	All other States.....	do.....	+ .021
Youngberries.....	All States.....	do.....	+ .021
Blueberries:			
Wild.....	do.....	do.....	+ .051
Cultivated.....	do.....	do.....	+ .005
Currants.....	do.....	do.....	+ .051
Crabapples.....	do.....	Ton.....	+27.00
Quinces.....	do.....	do.....	+35.00

(2) If you use dextrose, corn syrup, corn syrup solids or liquid sugar in processing an item, you shall first convert all sweetening ingredients, including sucrose, to a sugar solids basis in accordance with Table 23 of the publication: *Conversion Factors and Weights and Measures for Agricultural Commodities and Their Products* (U. S. Department of Agriculture, Production and Marketing Administration, August, 1947) or any equivalent table. Then determine the cost increase or decrease for each sweetening ingredient in accordance with subparagraph (1) of this paragraph, and compute the total cost increase of all sweeteners in the item weighted to reflect the proportions of each sweetening ingredient in the item.

(3) You then add the amount of your sugar or syrup cost adjustment to your

adjusted base price, as adjusted for your raw material cost changes.

(e) *Your ceiling price.* The total of your adjusted base price, your raw material cost adjustment, and your sugar or syrup cost adjustment is your ceiling price, f. o. b. factory of origin.

If you process an item for which you have established a ceiling price under this section, and if you also acquire the same item from other sources, your ceiling price for the item determined under this section applies to all sales of the item.

(f) *Recalculation.* If, during the pack, your purchase price for the same grade or grades of raw material, changes from that which you were paying when you calculated your prevailing ceiling price for an item, you shall recompute your raw material cost adjustment for

the item when your pack has reached an amount equal to 20 percent of your 1950 pack of the same item, (or if you did not pack the item in 1950, then an amount equal to 20 percent of your estimated 1951 pack of the item), and you shall again recompute your raw material cost adjustment immediately after you have completed your pack of the item. If either of these recomputations shows a decrease in raw material cost, you shall in each case immediately recalculate your ceiling price for the item. If either of these recomputations shows an increase in raw material cost, you may, but you are not required to, recalculate your ceiling price for the item. In recalculating the ceiling price of an item under this subsection, you shall figure your weighted average cost of all of the raw material used in processing the item up to the time of your recomputation.

In any case of recalculation of your ceiling prices, no item may be delivered after the recalculation at a price higher than the recalculated ceiling price.

(g) *Items which are mixtures of more than one fruit or berry.* If you process an item which is a mixture of two or more fruits or berries, you calculate your ceiling price for such item as follows:

(1) Multiply your base price for the item determined under paragraph (a) of this section by the appropriate figure named in Table I in paragraph (b) of this section. The result is your adjusted base price for the mixture.

(2) Determine the raw material adjustment per ton (or other unit of purchase) in accordance with paragraph (c) of this section for each kind of fruit or berry in the mixture.

(3) Convert the raw material cost adjustment for each kind of fruit or berry in the mixture to a per unit basis in accordance with paragraph (c) (3) of this section, using as your yield the yield for each kind of fruit or berry as though it were processed separately.

(4) Multiply the result obtained for each kind of fruit or berry under subparagraph (3) of this paragraph by the percentage by weight of that kind of fruit or berry in the mixture and combine the amounts obtained by this multiplication. The result, which may be a plus or minus figure, is your raw material cost adjustment for the mixture.

(5) If the result of subparagraph (4) of this paragraph is a plus figure, you add that figure to your adjusted base

price. If the result of subparagraph (4) is a minus figure, you subtract that figure from your adjusted base price.

(6) Compute your sugar or syrup adjustment in accordance with paragraph (d) of this section, and add this amount to your adjusted base price adjusted for raw material cost changes. The result is your ceiling price f. o. b. factory for the item.

**SEC. 3. Ceiling prices for base distributors.** You calculate your ceiling price for each item covered by this regulation by first determining your "base period" for the item. ("Base" is defined in paragraph (a) of this section). Thereafter, you adjust your "base period" by combining your "base price" with the difference between your 1948 and your 1951 "weighted average acquisition costs" of the item. ("Weighted average acquisition cost" for each of these years is defined in paragraph (b) of this section).

(a) *How base distributors determine their base price.* Your "base price" during the "base period", as this term is defined in section 26, is your "weighted average sales price" per unit of sale for the item sold during the base period to wholesalers.

Your "weighted average sales price" is the total gross sales dollars charged f. o. b. factory of origin, including no more than one month's storage charges, for the item during the base period divided by the number of units of sale represented thereby. You shall include in your weighted average sales price only the sales and sales contracts defined in section 2 (a) (1).

(b) *How base distributors determine their acquisition cost adjustment.* Next you determine the difference between your 1948 and 1951 "weighted average acquisition cost" for the item for each of these years. This cost is the total gross dollars paid by you for purchase of the item f. o. b. the factory of origin, including not more than one month's storage charges, divided by the total number of units of sale represented thereby. If your 1948 cost is greater than your 1951 cost, your difference is a minus figure. If your 1951 cost is greater than your 1948 cost, your difference is a plus figure.

Your 1948 weighted average acquisition cost is computed for the period from your first purchase of the item from the 1948 pack to the beginning of the 1949 pack of the item. Your 1951 weighted average acquisition cost is computed

from the date of your first purchase of the item from the 1951 pack of the item to the beginning of the 1952 pack of the item, or to the date of calculating your ceiling price, whichever is earlier.

If you do not have a 1948 acquisition cost you may not price under this section.

(c) *Your ceiling price.* If the difference under paragraph (b) of this section is a minus figure, you subtract that figure from your base price for the item. If that difference is a plus figure, you add that figure to your base price for the item.

The result is your ceiling price for the item f. o. b. the factory of origin.

(d) *Recalculation.* If, during the 1951 pack of the item, your acquisition costs change from that which you were paying when you calculated your ceiling price for the item, you shall recompute your acquisition cost adjustments for the item when your purchases of the item have reached an amount equal to 20 percent of your 1950 purchases of the same item, and you shall again recompute your acquisition cost adjustment immediately after the completion of the 1951 pack of the item. If either of these recomputations shows a decrease in your acquisition cost, you shall in each case immediately recalculate your ceiling price for the item. If either of these recomputations shows an increase in your acquisition cost, you may recalculate your ceiling price for the item. In recalculating the ceiling price of an item under this paragraph, you shall compute the weighted average acquisition cost of all purchases of the item up to the time of your recomputation.

No item may be delivered after any recalculation of your ceiling price at a price higher than the recalculated ceiling price.

**Sec. 4. Ceiling prices for processors who purchase raw material on open-end contracts, grower-processors, and grower-owned cooperatives—**(a) *Raw material adjustment.* (1) If you are a processor who purchases raw material on open-end contracts, you shall use your actual weighted average raw material costs for 1948, and 1951, and make your determination of your raw material cost adjustment in accordance with section 2. If you can determine your actual weighted average raw material cost for 1948 but cannot determine your 1951 costs because of facts not ascertainable

at the time of calculating your ceiling prices, you shall borrow the 1951 weighted average raw material costs per ton (or other unit of purchase) of your nearest processor of the same kind of raw material in the same raw material area as set forth in Table II who has determined his weighted average raw material costs for these three years in accordance with section 2. You shall then use your actual 1948 costs and your borrowed 1951 costs and make your determination of your raw material cost adjustment in accordance with section 2.

(2) If you are a grower-processor or a grower-owned cooperative, and if in 1948 and 1951 you purchased at least 10 percent, by weight, of your total use of raw material of the product at prices definitely ascertainable at the time of making this computation, you shall use the weighted average purchases for each of these years as your weighted average raw material cost for each of these years and make your determination of your raw material adjustment in accordance with section 2. If, in any of these years, you did not have such purchases, but did make sales to other processors of the same kind of raw material in a total amount equal to or exceeding 10 percent, by weight, of the amount processed by you in such year, you may substitute the weighted average of such sales for such year.

(3) If you are a grower-processor or a grower-owned cooperative, and you cannot compute your raw material adjustment under subparagraph (2) of this paragraph, you shall borrow the raw material adjustment per ton (or other unit of purchase) of your nearest processor of the same kind of raw material in the same raw material area as set forth in Table II.

(b) *Your ceiling price.* In every case, after having obtained your raw material adjustment in accordance with the above paragraphs, you shall calculate your ceiling prices under the provisions of section 2.

(c) *Reports.* If you calculate your ceiling prices under the provisions of this section, you are required to comply with the reporting requirements of section 19.

(d) *Revision of ceiling prices.* Ceiling prices established under this section are subject to revision by the Director of Price Stabilization in accordance with section 7 (e) of this regulation.

**SEC. 5. Ceiling prices for products in new retail carton sizes—(a) Processors.** If you sold the same product during the base period in an item or items which differed from the item being priced only in size of retail carton, and if the size of such carton used during the base period was not more than 50 per cent larger or smaller than the item now being priced, you calculate your ceiling price for the new item, as follows:

(1) Determine your raw material cost per unit of sale for the item sold during the base period (whether or not currently packed).

(2) Divide this raw material cost by the label weight of the item sold during the base period.

(3) Multiply this result by the label weight of the item you are pricing.

(4) Subtract the raw material cost from the base price per unit of sale of the item sold during the base period.

(5) Add the result in subparagraph (4) of this paragraph to that secured in subparagraph (3) of this paragraph. This result is your base price for the new item. You shall then calculate your ceiling price for the item in accordance with section 2 of this regulation.

(b) *Base distributors.* If you sold the same product during the base period in an item or items which differed only in size of retail carton, and if the size of such carton used during the base period was not more than 50 per cent larger or smaller than the item now being priced, you calculate your ceiling price for the new item by determining the relationship between the opening prices for the new item and for a "comparison item" as quoted in your "price list". Your "price list" means your first written opening price list from among your lists for 1950, 1949, or 1948, (in that order) on which the comparison and the item being priced both appear.

(1) You shall select as a "comparison" items from your price list, that item differing only in container size which is nearest in container size to the item being priced and for which you have calculated a ceiling price under section 3 of this regulation.

(2) Divide the price on your price list for the item being priced by the price on your price list for the comparison item.

(3) Multiply your ceiling price for the comparison item by the quotient obtained in subparagraph (2) of this paragraph. The result is your ceiling price for the item being priced.

[Amdt. 1, 16 F. R. 10935, Oct. 27, 1951]

**SEC. 6. Ceiling prices for sellers who are unable to calculate their ceiling prices under section 2, 3, 4 or 5 of this regulation—(a) Processors.** If you are a processor and are unable to calculate your ceiling price for an item under sections 2, 4 or 5, you shall use as your ceiling price for that item the simple average of the ceiling prices for the same item, and for the same class of sale, of the three processors of the item who are most competitive with you and who are located in the same pricing area as you are. If there are only two such processors in the area, use the simple average of the two available ceiling prices. If there is only one such processor in the area, you may use his ceiling price.

(b) *Base distributors.* If you are a base distributor and are unable to calculate your ceiling price for an item under section 3, you shall use as your ceiling price for that item the simple average of the ceiling prices for the same item, of the three sellers (either processors or base distributors) who are most competitive with you and who are located in the same pricing area as you are. If there are only two such sellers in the area, use the simple average of the two available ceiling prices. If there is only one such processor in the area, you may use his ceiling price.

(c) *Revision of ceiling prices by the Director of Price Stabilization.* Ceiling prices established under this section are subject to revision by the Director of Price Stabilization in accordance with section 7 (e) of this regulation.

(d) *Application for ceiling prices.* If you are unable to obtain the ceiling prices of the required processors located near you, apply to the Fruit and Vegetable Branch, Office of Price Stabilization, Washington 25, D. C., for an individual authorization of a ceiling price in accordance with section 7 of this regulation.

(e) *Reports.* If you calculate your ceiling prices under the provisions of this section, you are required to comply with the reporting requirements of section 19.

**SEC. 7. Individual authorization of ceiling prices.** If you cannot determine

your ceiling price for an item under any of the foregoing pricing methods of this regulation you shall, before delivering the item to any purchaser, apply to the Fruit and Vegetable Branch, Office of Price Stabilization, Washington 25, D. C., for a ceiling price for each item. This application shall be made on OPS Public Form No. Pub. 78 available at any Office of Price Stabilization office.

(a) *Information that must be given in all cases.* In all such cases, you shall submit, if available, the following information in your application.

(1) A description in detail of the item for which a ceiling price is sought; a statement of the facts that make it different from the most similar item for which you have determined a ceiling price, identifying the similar item and stating its ceiling price; and a statement giving the reasons why a ceiling price cannot be established under the pricing methods of this regulation. This statement shall indicate whether sales of the item have previously been made, and if so, whether you established a ceiling price under the General Ceiling Price Regulation, and if so, the ceiling price you so established for each class of purchaser and the number of the section of the General Ceiling Price Regulation under which you established such ceiling price.

(2) The 1948, 1950 and 1951 weighted average raw material costs per ton (or other unit of purchase) figured in the manner and subject to the limitations set forth in section 2 of this regulation, and a statement showing your current yield in units of sale.

(3) An itemized breakdown of your estimated total costs for 1951 computed in accordance with your customary accounting practice.

(4) The ceiling price you propose for the item, indicating whether it is for sale to wholesalers, or other classes of purchasers, and any discounts, or allowances that should be applicable to the proposed ceiling price and a list of your customary discounts, transportation and other allowances and price differentials.

(5) The volume of the item which you have on hand and which you expect to produce during the remainder of the pack year.

If you are unable to submit any of the required information, state why you are unable to do so.

(b) *Supplementary information must be given if specifically requested.* You shall mail to the Fruit and Vegetable Branch, Office of Price Stabilization, Washington 25, D. C., within 15 days after receipt of a request such additional information as shall be requested. If you fail, without reasonable explanation, to submit all additional information that may have been requested within 15 days after the request is mailed, your application shall be considered withdrawn and the docket closed. Unless the application is refilled, the docket will not be reopened upon later receipt of this information, and further consideration by the Office of Price Stabilization will not be given.

(c) *Disposition of application.* Upon receipt of your application, the Office of Price Stabilization will authorize a ceiling price, or a method of determining the ceiling price, for you or for sellers of the item generally. The ceiling price authorized shall be one that bears a proper relationship to those for comparable items and sellers.

Your proposed price shall be considered authorized 20 days after the application, or all additional information that may have been requested (whichever date is the later), is mailed by registered air mail, addressed to the Fruit and Vegetable Branch, Office of Price Stabilization, Washington 25, D. C., unless within that time, you have received from the Office of Price Stabilization a notice to the contrary.

(d) *Delivery before authorization of ceiling prices.* After filing the application, you may deliver the item and receive a payment of not more than 75 percent of the proposed price, but you may not receive further payment for it until a ceiling price is authorized.

(e) *Revision of prices by the Office of Price Stabilization.* Any ceiling price established under this section shall be subject to revision at any time by the Office of Price Stabilization.

**SEC. 8. Sales f. o. b. shipping points other than factory of origin.** If, during the base period, you sold, either as a processor or a base distributor, all or portions of an item at a shipping point other than the factory where the item was processed and if you did not, during the base period absorb the transportation costs from the factory to this shipping point, you shall, in calculating your ceiling price f. o. b. factory of origin, sub-

tract from the base period sales price the transportation costs for the item from the factory of origin to such shipping point. Then add to your f. o. b. factory ceiling price, for all or any portion of the item sold f. o. b. such shipping point, the current transportation costs from the factory of origin to such shipping point.

**SEC. 9. Uniform f. o. b. factory prices for factories in different pricing areas.**

(a) If you process the item being priced at more than one factory and if your ceiling prices for the item vary by factories located in different pricing areas, you may establish a uniform ceiling price for the item for any group of factories by figuring a weighted average of their separate ceiling prices.

(b) For any two or more factories selected by you, your "weighted average ceiling price" shall be figured by you as follows:

(i) Determine the total gross sales dollars which would have been obtained if your total production of the item at those factories during 1950 had been sold at the separate ceiling prices otherwise determined under this regulation and,

(ii) Divide that figure by the total number of units of sale of the item included in that 1950 total production. The result is your uniform f. o. b. factory price.

(c) If you at any time recalculate your ceiling prices for an item under the provisions of section 2 of this regulation, you shall at that time recalculate your weighted average ceiling price under this section.

**SEC. 10. Delivered prices.** You may figure a delivered ceiling price by adding to the ceiling price for the item f. o. b. factory of origin, the amount of the current transportation charges per unit of sale of that item.

**SEC. 11. Uniform delivered pricing by zones or areas—(a) Sellers who sold during 1950 on a uniform delivered price by zones or areas—(1) For one factory.** If you sold or delivered an item covered by this regulation during 1950 on an established uniform delivered price basis by zones or areas, you may establish a delivered ceiling price for the same zones or areas by adding to your ceiling price f. o. b. factory of origin an average transportation charge, figured on the same basis as you figured such charge during 1950, but at current transportation rates. If you desire to sell an addi-

tional item not sold during 1950 on such uniform delivered price basis, you may establish a uniform delivered ceiling price for the same zones or areas, by adding to your f. o. b. factory of origin ceiling price for the item, transportation charges which are mathematically proportional by shipping weight to the charges which were added to an item of the nearest shipping weight sold on a uniform delivered price basis in 1950.

(2) *For two or more factories.* If you sold an item during 1950 from two or more factories on an established uniform delivered price basis, by zones or areas, regardless of the factories from which the shipment was made, you may continue such practice for the same zones or areas. Your uniform delivered ceiling price for the item shall be the weighted average of the delivered ceiling prices, as figured in subparagraph (1) of this paragraph, for the item computed on the basis of the proportion of production of the item in each of your respective factories in 1950, or you may add to your uniform f. o. b. factory price an average transportation charge, figured on the same basis as you figured such charge during 1950, but at current transportation rates.

[CPR 82, 16 F. R. 10454, Oct. 12, 1951, as amended by Amdt. 1, 16 F. R. 10936, Oct. 27, 1951]

**SEC. 12. Payment of brokers.** In each case, the amount paid by the buyer to the processor or base distributor plus any amount paid by the buyer for brokerage service to the broker shall not exceed the total of the processor's or base distributor's ceiling price and allowable transportation costs actually paid by the processor, base distributor or by the broker. The term "broker" includes a "finder."

**SEC. 13. Ceiling prices for specially packaged items—(a) Amount of adjustment.** If your buyer specifies, in writing, special packaging for government use other than standard packaging you shall adjust your ceiling price per unit of sale of the item as otherwise determined under this regulation if the special packaging required is lower in cost than standard packaging. "Packaging" and "standard packaging" are defined in paragraph (d) of this section. If the cost of standard packaging per unit of sale to you is greater than the cost of the required special packaging per unit of sale, you shall subtract such

difference in cost from your ceiling price per unit of sale otherwise determined under this regulation. This result is your f. o. b. factory of origin ceiling price per unit of sale of the specially packaged item. If the cost of the required special packaging, per unit of sale, is greater than the cost of standard packaging per unit of sale, you may, but are not required to, add such difference in cost to your ceiling price per unit of sale otherwise determined under this regulation. The result is your f. o. b. factory of origin ceiling price per unit of sale of the specially packaged item.

(b) *Invoice and record-keeping requirements.* In any case where your ceiling price is adjusted under this section, you shall:

(1) Show separately the amount of the adjustment in your contract of sale or on your invoice.

(2) In addition to the records otherwise specified by this regulation, prepare and keep for inspection by the Office of Price Stabilization, for two years from the date of your invoice to the buyer, accurate records showing the cost of standard packaging and the cost of packaging according to the specifications of the buyer.

(c) *Computation of costs.* You shall compute your costs according to your established accounting methods. You must make allowances for any materials salvaged in unpacking and repacking.

(d) *Meaning of "packaging" and "standard packaging".* (1) "Packaging" means the providing of wrappings, inner cartons, outer cartons; the placing of commodities in such wrappings or cartons; the application of any special coverings or coatings; and any unpacking and repacking necessary to conform to the specifications of the buyer.

(2) "Standard packaging" means the most expensive packaging the cost of which was included in figuring the ceiling prices established by this regulation.

**SEC. 14. Fractions of a cent.** When calculating your ceiling prices, you shall carry out all amounts to four decimal places (hundredths of a cent). If any calculated ceiling price includes a fraction of a cent, you adjust your ceiling prices to the nearest quarter of a cent with respect to sales of items in institutional sizes and to the nearest half-cent in sales of items in consumer sizes. However, if you had an established

method for quoting your sales prices during the base period, you may continue to adjust your ceiling price to the nearest cent or half-cent or quarter-cent in accordance with such established method.

**SEC. 15. Maintenance of customary discounts, allowances and price differentials.** You shall not change any customary allowance, discount or other price differential (as defined in section 26 of this regulation) to a purchaser or class of purchasers, if the change results in a higher price to that purchaser or class. However, this provision does not require you to sell any item unlabeled, or under a buyer's label, or to extend or duplicate any temporary promotional campaign.

**SEC. 16. Export sales.** The ceiling price at which you may export any item covered by this regulation shall be determined in accordance with Ceiling Price Regulation 61.

**SEC. 17. Storage.** (a) You may not add to the ceiling price of items, storage costs on goods owned by you if customarily such costs were absorbed by you. For sales of an item on a storage basis (beyond one month's storage), you may adjust your ceiling price in accordance with your established practice by the amount of your current storage cost or your current storage standards for each item. You may compute such costs either on a monthly basis or an average yearly basis, provided that the average yearly basis shall not exceed a total of the charge for seven months storage, including the first month's storage charges.

(b) Storage by you of goods owned by the buyer shall be charged for in accordance with the rates provided by the ceiling price regulation applicable to such services.

**SEC. 18. Records which must be kept.** If you make sales covered by this regulation, you shall:

(a) Preserve for examination by the Office of Price Stabilization, for two years from the date of your invoice to the buyer, all records of the same kind as you have customarily kept, relating to the prices which you charged for those sales, and

(b) Preserve for examination by the Office of Price Stabilization for as long as the Defense Production Act of 1950, as amended, remains in effect, and for two years thereafter, all your existing

records which were the basis of calculating your ceiling prices in the manner directed by this regulation, showing the method used in calculating the ceiling prices.

**SEC. 19. Reports which must be filed.**

(a) If you determine ceiling prices for items covered by this regulation, you shall mail to the Fruit and Vegetable Branch, Office of Price Stabilization, Washington 25, D. C., a report on OPS Public Form No. Pub. 97 available at any office of the Office of Price Stabilization, for all items for which you determine ceiling prices under this regulation. All items of a particular product may be included on one form. However, you shall file a supplemental form if you calculate ceiling prices for some items of the particular product at a later date.

(b) You shall mail to the Fruit and Vegetable Branch, Office of Price Stabilization, Washington 25, D. C., the report required by this section for any item within 5 days after such item is offered for sale.

**SEC. 20. Sales slips and receipts.** If you have customarily given a purchaser a sales slip, invoice or similar evidence of purchase, you shall continue to do so. Upon request, you must, regardless of previous custom, give the purchaser a receipt showing the date, your name and address, the name and quantity of each item sold, and the price received for it.

**SEC. 21. Transfer of business.** If the business, assets or stock in trade of any person covered by this regulation, is sold or otherwise transferred to you on or after the effective date of this regulation, your ceiling prices for items covered by this regulation and processed or dealt in in the course of such business shall be the same as those which your transferor would have been required to use, and your obligation to keep records sufficient to verify such prices is the same. The transferor must either preserve and make available, or turn over, to you all records of transactions prior to the transfer which he has and which are necessary to enable you to comply with the record provisions of this regulation.

**SEC. 22. Adjustable pricing.** You may agree to sell at a price which can be increased up to the ceiling price in effect at the time of delivery, but you may not, unless authorized by the Office of Price Stabilization, deliver or agree to deliver

at prices to be adjusted upward in accordance with action taken by the Office of Price Stabilization after delivery. Such authorization may be given when a request for a change in the applicable ceiling price is pending, but only if the authorization is necessary to promote production or distribution and will not interfere with the purpose of the Defense Production Act of 1950, as amended. The authorization may be given by the Director of Price Stabilization or by any official of the Office of Price Stabilization having authority to act upon the pending request for a change in price or to give the authorization. The authorization will be given by order, except that it may be given by letter or telegram when the contemplated action is the authorization of an individual ceiling price.

**SEC. 23. Treatment of excise taxes—(a) Taxes in effect during base period.** If, during the base period, you separately stated and collected any excise or similar tax you may continue to collect the current amount of any such tax in addition to your ceiling price. If you did not customarily, during the base period, state and collect separately from the purchase price the amount of tax paid by you, you may not collect the amount of such tax in addition to your ceiling price.

(b) *Taxes imposed since base period.* In all other cases, if at the time you calculate your ceiling price the statute or ordinance imposing the tax does not prohibit you from stating and collecting the tax separately from the purchase price, you may collect in addition to your ceiling price, the amount of the tax actually paid by you.

In every case where the tax is collected from the purchaser, the amount thereof shall be separately stated.

**SEC. 24. Compliance with this regulation—(a) No selling or buying above ceiling prices.** Regardless of any contract or obligation, no person shall sell or deliver or, in the course of trade, buy or receive any item at a price higher than the ceiling price established by this regulation.

(b) *Evasion.* No person shall evade a ceiling price, directly or indirectly, whether by commission, service, transportation, or other charge or discount, premium, or other privilege; by tie-in requirement or other trade understanding; by any change of style of pack; by a

business practice relating to grading, labeling or packaging, or in any other way.

(c) *Enforcement.* Any person violating a provision of this regulation is subject to the criminal penalties, civil enforcement actions, and suits for treble damages provided by the Defense Production Act of 1950, as amended.

SEC. 25. *Petitions for amendments, protests and interpretations.* Any protest, petition for amendment, or request for interpretation of this regulation, may be filed in accordance with the provisions of Price Procedural Regulation 1, Revised.

SEC. 26. *Definitions.* When used in this regulation the term:

(a) "Base distributor" means a person other than a processor who purchases the item from a processor and sells the item to wholesalers and chain store buying agencies.

(b) "Base period" for an item means the 60-day period beginning with and including the first day you sold the item of the 1948 pack at a firm price.

(c) "Frozen fruit or berry" means a fresh fruit or berry which has been processed by a processor by subjecting the fruit or berry to temperatures below the freezing point so as to extend materially the period of its availability for consumption as a food. This term includes all fruits or berries which are so processed irrespective of the speed of freezing or the temperatures employed.

(d) "Grade" means the commercial grade or customary trade quality designation at the time of shipment. However, where the processor elects to use grades as established and defined by any governmental agency and sells the item under any such grade designation, the term "grade" means such grade at time of shipment.

(e) "Item" means a kind, variety, grade, size, style of pack, or container type or size, of a product. Brand names shall not in themselves constitute separate items.

(f) "Pack" of any year means the items obtained from the raw product, the major portion of which is processed during that calendar year.

(g) "Person" means an individual, corporation, partnership, association, or any other organized group of persons, and their legal successors or representa-

tives. The term includes the United States, its agencies, other governments, their political subdivisions and their agencies.

(h) "Processor" means a person who is engaged commercially in preserving fruits or berries by processing by freezing so as to extend materially the period of its availability for consumption as a food. The term includes a person who has the item processed for him by another and who owns the raw material immediately prior to and throughout the processing.

(i) "Product" means the common and usual name of a finished food processed from a fruit or berry covered by this regulation.

(j) "Sales at retail" means sales to ultimate consumers other than commercial, industrial and institutional users.

(k) "Sales at wholesale" means sales with respect to which the processor has performed the function of selling as a wholesaler to retail stores, but not including sales to chain store buying agencies, or to associations of retail store buying agencies which warehouse the product prior to distribution to the individual retail outlet.

(l) "Same pricing area" means the same area, both for permitted increases other than raw material and for raw material permitted adjustments as set forth in Tables I and II.

(m) "Units of sale" means your customary invoicing quantities of the item, such as dozen, carton, pound, etc.

(n) "Weighted average raw material cost" means the total amount paid by the processor to the grower for the raw agricultural material plus any transportation, storage, harvesting, seeds and plants, freight, boxes, bags, acquisition, and other direct costs paid or incurred by the processor up to the point of delivery at his factory divided by the total tons (or other units of purchase) of raw material represented thereby.

(o) "You" or "Your" means any processor or other person whose sales are covered by this regulation.

SEC. 27. *Different price classes.* If you sold the item during the base period to the same class of purchaser in not more than two price classes, so that the price of the lower price class differed from the higher price class by a specific and definite dollar-and-cent differential, you

shall calculate your ceiling price by using as your base price only your weighted average sales of the item during the base period of the lower price class. In all sales of items of the higher price class, you may add to your ceiling price for the item this same dollar-and-cent differential which existed during the base period. However, your sales of items of the higher price class shall not exceed the higher of either (a) the number of dozens of the higher price class sold in 1950; or (b) your 1951 sales of dozens of the item of both price classes multiplied by the percentage your 1950 sales of dozens of items of the higher price class bears to your total 1950 sales of dozens of the item.

[Amdt. 2, 16 F. R. 11111, Nov. 1, 1951]

## CPR 82, SR 1—Optional Pricing for Frozen Fruits and Berries of the 1951 Pack

### Sec.

1. What this supplementary regulation does.
2. Optional pricing for frozen fruits and berries.
3. Ceiling prices for processors unable to use section 2 of this supplementary regulation.
4. Sales under Ceiling Price Regulation 82.
5. Reports which must be filed.

**AUTHORITY:** Sections 1 to 5 issued under sec. 704, 64 Stat. 816, as amended; 50 U. S. C. App. Sup. 2154. Interpret or apply Title IV, 64 Stat. 803, as amended; 50 U. S. C. App. Sup. 2101-2110, E. O. 10161, Sept. 9, 1950, 15 F. R. 6105; 3 CFR, 1950 Supp.

**SOURCE:** Sections 1 to 5 contained in Ceiling Price Regulation 82, Supplementary Regulation 1, 16 F. R. 12247, Dec. 5, 1951; 16 F. R. 12871, Dec. 22, 1951.

**SECTION 1.** *What this supplementary regulation does.* This supplementary regulation modifies Ceiling Price Regulation 82 by allowing sellers of frozen fruits and berries covered by CPR 82 to establish as their ceiling prices for all items of frozen fruits and berries of the 1951 pack their sales prices in effect immediately prior to the effective date of CPR 82. These sellers of frozen fruits and berries may sell at or below the ceiling prices established under CPR 82. If, however, a seller chooses to price under the provisions of this supplementary regulation for any item, he must price all items of frozen fruits and berries of the 1951 pack under this supplementary regulation. All provisions of CPR 82 not inconsistent with this supplementary

regulation remain in full force and effect.

**SEC. 2.** *Optional pricing for frozen fruits and berries.* You may establish as your ceiling price for each item of frozen fruits and berries covered by the provisions of CPR 82, your weighted average sales price for each such item during the period November 1 to 30, 1951, inclusive. In computing this "weighted average sales price", you shall include all actual sales at firm prices of the item made during the period in the regular course of business, regardless of the date of delivery or date of pack. You shall exclude the following sales and sales contracts, even though made during the period: Sales at retail (including sales to growers and employees) and at wholesale; sales to chain store buying agencies, or to retail store buying agencies which warehouse the product; sales to government procurement agencies; sales of damaged goods and goods packed for experimental purposes. If you made no sales of a particular item during the period November 1-30, 1951, inclusive, you shall substitute for that period the first from among the following periods in which you did make sales of such item: October 1-31, 1951, inclusive; September 1-30, 1951, inclusive; August 1-31, 1951, inclusive; July 1-31, 1951, inclusive; June 1-30, 1951, inclusive; May 1-31, 1951, inclusive; April 1-30, 1951, inclusive; March 1-31, 1951, inclusive; February 1-28, 1951, inclusive (in that order).

**SEC. 3.** *Ceiling prices for processors unable to use section 2 of this supplementary regulation.* If you made no sales of a particular item during the period February 1-November 30, 1951, inclusive, and you desire to price all items of all frozen fruits and berries of the 1951 pack under this supplementary regulation, you shall establish as your ceiling price for such item not sold during such period your ceiling price established under the provisions of the General Ceiling Price Regulation.

**SEC. 4.** *Sales under Ceiling Price Regulation 82.* You may sell items of frozen fruits and berries of the 1951 pack at or below your ceiling prices established under CPR 82 without reference to this supplementary regulation. However, if you establish a ceiling price for any item of frozen fruits and berries under this supplementary regulation, you shall establish ceiling prices for all items of all